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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,638	03/16/2004	Robert Abend	0666.1000002/TGD/ALF	1143

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

KERSHTEYN, IGOR

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/800,638	Applicant(s) ABEND ET AL.	
	Examiner Igor Kershteyn	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 20-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06/14/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 23, in lines 11-12, recites "said oil passages are positioned vertically in a thick portion of said center section" which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In page 12, lines 16-20, specification recites "In order to connect arcuate ports 40a and 40b on pump mounting surface 40 with arcuate ports 41a and 41b on motor mounting surface 41, a first linear oil passage 5a and a second oil passage 5b vertically and forwardly bored in a thick portion of center section 5 so as to reduce the lateral length of center section 5" and it appears in figures 3-5 that the orientation of oil passages 5a and 5b is horizontal.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20 and 23, as far as it is definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Thoma et al. (5,090,949).

In figures 1-3, and 5, Thoma et al. teach an axle driving system, comprising: a housing 22,23; a hydrostatic transmission disposed in said housing 22,23 including an input means 10,12,43,50,53,55, a hydraulic pump 20 driven by said input means 10,12,43,50,53,55, a hydraulic motor 21 driven by pressurized oil from said hydraulic pump 20, an output means 92 driven by said hydraulic motor 21, and a center section 77 on which said hydraulic pump 20 and said hydraulic motor 21 are mounted and are fluidly connected with each other; an axle 40; and a driving gear train 101,108-112,114-116,34 disposed in said housing 23,22 for drivingly connecting said output means 92 of said hydrostatic transmission and said axle 40; wherein said center section 77 is separably mounted in said housing 22,23, so that a first portion (not numbered) is provided adjacent to said axle 40 and a second portion (not numbered) is provided away from said axle 40, a pump mounting surface (not numbered) for mounting said hydraulic pump 20 is provided on said first portion, and a motor mounting surface for mounting said hydraulic motor 21 is provided on said second portion, the center section 77 further comprises: a pair of first kidney-shaped ports 74,75 open on said pump mounting surface for receiving oil supplied or discharged into or from said hydraulic pump 20; a pair of second kidney-shaped ports 81,82 open on said motor mounting surface for receiving oil supplied or discharged into or from said hydraulic motor 21; and

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a pair of oil passages 80 provided in said center section 77 for fluidly connecting said first kidney-shaped ports 74,75 and said second kidney shaped ports 81,82; wherein said oil passages 80 are positioned vertically in a thick portion of said center section 77.

Note. Since the Applicant failed to provide the definition of term "adjacent" in the specification, the definition was taken from Merriam-Webster dictionary as **adjacent - 1 a** : not distant : NEARBY because it does not appear in the Applicant's figures 1 and 19 that the first portion --**b** : having a common endpoint or border-- or --**c** : immediately preceding or following--.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-22, and 23, as far as it is definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujisaki et al. (4,942,780).

In figures 1-3, Fujisaki et al. teach an axle driving system, comprising: a housing 11,12; a hydrostatic transmission disposed in said housing 11,12 including an input means 9, a hydraulic pump P driven by said input means 9, a hydraulic motor M driven by pressurized oil from said hydraulic pump P, an output means 24 driven by said hydraulic motor M, and a center section 12e,12c on which said hydraulic pump P and

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said hydraulic motor M are mounted and are fluidly connected with each other; an axle 6R,6L; and a driving gear train 13,14,7 disposed in said housing 11,12 for drivingly connecting said output means 24 of said hydrostatic transmission and said axle 6R,6L; wherein said center section has a first portion 12c is provided adjacent to said axle 6L and a second portion 12e is provided away from said axle 6L, a pump mounting surface (not numbered) for mounting said hydraulic pump P is provided on said first portion 12c, and a motor mounting surface for mounting said hydraulic motor M is provided on said second portion 12e.

Fujisaki et al. does not teach the center section is separably mounted in said housing.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the center section of Fujisaki et al. separably mounted in the housing for the purpose of replacing the center section without replacing the entire housing. See MPEP 2144.04.V.C Making separable.

Prior Art

Prior art made of record but not relied upon is considered pertinent to Applicant's disclosure and consist of one patent.

Shiba et al. (5,317,936) is cited to show an axle driving system having a housing a hydrostatic transmission mounted in the housing, an axle, a driving gear train but fails to teach a pump mounting surface adjacent to the axle.


Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kershteyn whose telephone number is **(571)272-4817**. The examiner can be reached on Monday-Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on **(571)272-4820**. The fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 0861.

IK
March 29, 2005

A handwritten signature in black ink, appearing to read 'Igor Kershteyn', written over a horizontal line.

**Igor Kershteyn
Patent examiner.
Art Unit 3745**